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June 30, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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OFFICE OF THE SECRETARY**

Common Carrier Bureau
Division of Policy and Planning
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

**Re: Bell Atlantic Petition for Forbearance from Application of
Section 272 to E911 Services; CC Docket No. 96-149**

Dear Mr. Caton:

The Common Carrier Bureau has requested that Bell Atlantic supplement its forbearance petition with additional information and explanation, as set forth below.

In its prior filings, Bell Atlantic explained how its E911 service relies on network components (E911 tandem switches and centralized data base) to provide routing and location information quickly, accurately and economically. Both of these components are duplicated within Bell Atlantic's network to ensure maximum reliability. In Bell Atlantic's typical service arrangement, a municipal E911 center (Public Safety Answering Point or PSAP) is connected to both the duplicate tandems and databases with dedicated circuits. The tandem directs an E911 call to the specific Public Safety Answering Point which has jurisdictional authority in the location of the 911 caller. The centralized data bases provide the necessary routing information to the tandem. In addition, while the local E911 dispatcher is talking to the caller, the PSAP sends a query over a dedicated line to the data base, which answers the query with the caller's address, location and other information. The total system is designed to provide the most accurate information as quickly as possible and for the least cost. Because some of the links cross LATA boundaries, the Bell companies previously obtained waivers of the AT&T decrees to operate the interLATA components of the services. Under the Commission's rules implementing section 272 of the Act, however, those interLATA aspects would now be subject to a separation requirement for the first time.

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The Telecommunications Act recognizes that where, as here, imposing a regulation would be harmful, the Commission must forebear from enforcing that regulation. In particular, forbearance of the requirements of section 272 with respect to E911 service meets all of the criteria for forbearance set forth in Section 10 of the Act.

Enforcement of the section 272 requirements is not necessary to ensure that the E911 charges and practices are just and reasonable or that the service is not unjustly or unreasonably discriminatory.¹ As authorized by prior waivers of the AT&T consent decree, Bell Atlantic and other local exchange carriers have continuously operated E911 service, and have provided the interLATA component of this service on a non-separated basis. This service has benefited customers and protected the public without a hint of a competitive problem. Indeed, the Commission has recognized that E911 service “directly promotes the statutory objective embodied in Section 1 of the Communications Act of ‘promoting safety of life and property through the use of wire and radio communications’” and “there are extraordinary requirements for service continuity, reliability and maintenance.”² In view of these considerations, the Commission has already recognized (in the context of Computer II rules for enhanced services) that structural separation requirements “need not govern the E911 services.”³ Nothing in section 272 provides a basis to alter that conclusion.

First, the rates for E911 service have already been found to be just and reasonable and these rates will continue to be regulated by state authorities. The Commission has recognized that forbearance is required when there are other market or regulatory checks on the rates, practices, classification and regulation of the service.⁴

In contrast, imposing a separate affiliate requirement would only serve to increase the cost of the service by eliminating economies of scope that underlie the provision of the service. For example, the Commission has held that a telephone operating company and a section 272 affiliate may not own transmission and switching facilities in common.⁵ Under current arrangements, the switch that routes E911 calls to the correct PSAP is also used as a local public exchange switch in the local company’s operating network. If a separation were required, the switch would either have

¹ *See* 47 U.S.C. § 160 (a)(1) (1997).

² *Southwestern Bell Tel. Co.*, File No. ENF 84-44, Mimeo No. 1709, at ¶ 16 (Common Carrier Bureau, rel. Jan. 8, 1985).

³ *Id.*

⁴ *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Second Report and Order at ¶ 27 (rel. Oct. 31, 1996) (Interexchange Tariff Order).

⁵ *Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Telecommunications Act of 1934, As Amended*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, FCC 96-489, ¶ 159 (rel. Dec. 24, 1996).

to function solely as an intraLATA switch (in which case the routing of the interLATA queries to the data base would require construction of separate switches owned by the interLATA E911 affiliate) or an interLATA switch (in which case, the local company would have to find an alternative local exchange switch). In either event, there would be needless duplication of facilities.

Alternatively, the local carrier could avoid the need for a section 272 affiliate by constructing a duplicate data base in each LATA. Not only would such an inefficient arrangement needlessly increase the cost of the service, it would lower the service quality by eliminating the availability of a remote alternative data base that today provides redundancy to avoid service disruption.

Second, Bell Atlantic is required to provide nondiscriminatory access to E911 service in order to obtain long distance relief.⁶ That requirement ensures that competing local exchange carriers must offer their local customers the same E911 service that Bell Atlantic offers its own customers. Like all checklist requirements, this nondiscrimination requirement applies to services "offered by a Bell operating company to other telecommunications carriers."⁷ If the Commission were to require that the interLATA E911 service only be offered through a separate affiliate, the only statutory nondiscrimination safeguard designed exclusively for this service would not even apply.

Enforcement of the Section 272 requirements is not necessary to protect customers of E911 service.⁸ As explained previously, requiring that the service be subject to section 272 requirements will increase the cost of the service by requiring needless duplication of facilities. Moreover, the transition to a service that complies with section 272 could result in a disruption of this vital service. Any network arrangement that is consistent with the Commission's interpretation of the section 272 requirements would require significant reconfiguration and could actually reduce the efficiency of the service operation.⁹

The Commission has found that where it is "highly unlikely" that abuse will occur, the safeguard is not necessary to protect consumers.¹⁰ Here, actual experience proves that the provision of local service and E911 service through the same affiliate creates no risk of anticompetitive conduct. After observing a multi-year record of local telephone company operation of E911 service, the Department of Justice recognized that their provision of such service "is in the public

⁶ 47 U.S.C. § 271(c)(2)(B)(vii)(I).

⁷ 47 U.S.C. § 271(c)(2)(B).

⁸ *See* 47 U.S.C. § 160 (a)(2).

⁹ As explained above, a single LATA E911 service would lack a back-up data base.

¹⁰ Interexchange Tariff Order at ¶ 36.

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interest” and “does not present any threat to competition among interexchange service providers.”¹¹ This remains equally true today.

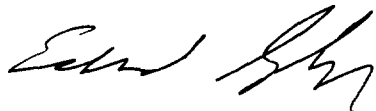
Forbearance from application of section 272 requirements is in the public interest.¹²

As all parties concede E911 is a vital public service. The public interest is best served by a regulatory mechanism that supports continuation of this service at the lowest cost without disruption.

In evaluating the public interest, the Act requires that the Commission consider whether forbearance will enhance competition among providers of telecommunications services.¹³ As previously explained, the Act ensured that E911 service would be available to other carriers as a condition for approval to provide in-region long distance service, a requirement that would not apply if interLATA E911 service could only be provided by a separate affiliate. Moreover, application of section 272 requirements to E911 service could harm consumers by dramatically increasing the cost of the service and thereby necessitating an increase in the E911 service surcharge.

The Commission should promptly grant the limited forbearance requested by Bell Atlantic.

Sincerely,



Edward Shakin

¹¹ Letter from Constance K. Robinson, Chief Communications & Finance Section, U.S. Department of Justice Antitrust Division to Alan F. Ciamporzero, Pacific Telesis Group (Mar. 27, 1991).

¹² *See* 47 U.S.C. § 160 (a)(3).

¹³ *See* 47 U.S.C. § 160 (b).